

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA)	
)	
V.)	Criminal No. 15-36
)	
ELIZABETH MCMAHAN)	

DEFENDANT'S POSITION WITH RESPECT TO SENTENCING FACTORS

AND NOW, comes the defendant, Elizabeth McMahan, by her attorney, and with respect to the above captioned matter, she represents the following:

INTRODUCTION

1. Undersigned counsel has reviewed the Presentence Report and Addendum with Elizabeth McMahan. He has also conferred about them with Assistant United States Attorney Christian A. Trabold and United States Probation Officer Jancy Garman.

2. After several postponements, the sentencing hearing is scheduled to commence at 1:30 p.m. on January 2, 2020.

3. The postponements were driven by the parties' resolution to meet and resolve issues relating to "loss" and restitution.

4. On Friday, December 20, 2019, undersigned counsel met extensively with Elizabeth McMahan, Christian A. Trabold and the FBI case agent.

5. The "upshot" of that meeting was that the parties did reach an agreement under which the heretofore unresolved

issues regarding "loss" and restitution have been resolved with the following Joint Stipulation; to-wit, a) under §2B1.1(b)(1)(H) of the United States Sentencing Guidelines, the "loss" is "more than \$550,000" and not "more than \$1,5000,000", such that there is a 14 level (and not a 16 level) enhancement, and b) the restitution is \$200,000.00.

6. As such, Elizabeth McMahan does hereby submit her Position with Respect to Sentencing Factors.

¶¶ 10-22
Offense Conduct

7. Elizabeth McMahan disagrees with several of the averments of fact which are set forth in these paragraphs. But based on the specific terms of the Joint Stipulation regarding "loss" and restitution, the Court need not hear, address or resolve these points of disagreement.

¶¶ 24 and 31
Obstruction of Justice

8. In the Motion for Downward Variance which Elizabeth McMahan will file separately, she will submit a legal and factual argument regarding the inapplicability of the §3C1.1 "perjury" enhancement.

9. She does hereby object to the application of §3C1.1.

¶¶ 25 and 34
Acceptance of Responsibility

10. Under the plea agreement, the parties agreed to a 2 level reduction under §3E1.1(a).

11. In the Motion for Downward Variance or at the sentencing hearing, undersigned counsel will be heard on the factual and legal impact of the parties' having--on December 20, 2019--agreed upon the Joint Stipulation regarding "loss" and restitution.

¶¶ 35 and 67
Total Offense Level

12. With the loss between \$550,000 and \$1,500,000 and without the application of the §3C1.1 obstruction enhancement, the Total Offense Level is 19, not 23, and the advisory guideline range is "30-37", not "46-57".

Respectfully submitted,

s/ Thomas Livingston
Thomas Livingston
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